UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

DAVID BACK,

NO. CIV. S-04-5 LKK/CMK

Plaintiff,

v. O R D E R

ALLSTATE INSURANCE COMPANY, INC.,

Defendant.

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Plaintiff brought suit against defendants alleging four causes of action: breach of duty to defend, breach of contract, breach of duty to settle, and breach of the covenant of good faith and fair dealing. Compl. at 7-8. Pending before the court are the parties' cross-motions for summary judgment/adjudication as to a myriad of issues, discussed infra. I decide the motions based on the parties' papers and after oral argument.

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## I.

## FACTS[1]

### A. THE SOULTS' HOMEOWNERS INSURANCE POLICY

On July 8, 2001, Deborah Soult, Troy Soult, and Jonathan Soult were insured under an Allstate homeowners insurance policy. Def.'s SUF 1. The policy insured the Soult family to the extent of $300,000 for each claim involving legal liability or damages on account of negligence or negligent conduct for the policy period of December 28, 2000 to December 27, 2001. Def.'s Ex. 2. The Soults' Allstate homeowners insurance policy contained the following exclusion:

> 5. We do not cover bodily injury or property damage arising out of the ownership, maintenance, use occupancy, renting, loaning, entrusting, loading or unloading of any motor vehicle or trailer. However, this exclusion does not apply to:
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> (a) a motor vehicle in dead storage or used exclusively on an insured premises;
> (b) any motor vehicle designed principally for recreational use off public roads, unless that vehicle is owned by an insured person and is being used away from an insured premises;
> (c) a motorized wheelchair;
> (d) a vehicle used to service an insured premises which is not designed for use on public roads and not subject to motor vehicle registration
> (e) a golf cart owned by an insured person when used for golfing purposes;
> (f) a trailer of the boat, camper, home or utility type unless it is being towed or carried by a motorized land vehicle;
> (g) lawn and garden implements under 40 horsepower;
> (h) bodily injury to a residence employee.

Def.'s SUF 2.

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[1] The facts are undisputed unless otherwise noted.

**B. THE 1977 FORD LTD.**

In July 2001, Teresa Voboril gave Dennis Martin a 1977 Ford Ltd. Def.'s SUF 4. The Ford was parked in Teresa Voboril's yard and was not in use between 1993 and July 2001. Pl.'s SUF 15. Between 1993 and 1994, the Ford was difficult to start and often required priming by using starting fluid. Pl.'s SUF 2. After 1993, the Ford was kept in the same place and not parked under any kind of cover. After the passenger window was broken out, animals went in and out of the Ford and cats often slept in it. Pl.'s SUF 23. Teresa Voboril attempted to spray Lysol inside, but "once the windows were broken out and the cats were in there, it was no use." Pl.'s SUF 25. The interior was moldy and mildewed. The hinges were worn out on the hood, and the Ford was started only from time to time after it was parked at the Voboril residence. Pl.'s SUF 10. Teresa Voboril stated that, at the time she gave the Ford to Martin, she did not believe the car was driveable, Pl.'s SUF 29, and that she believed the only thing of value was the engine. Pl.'s SUF 33. Martin felt the vehicle was unsafe and "never had it in his mind" to put the car in driveable condition. Pl.'s SUF 77. Martin never registered the Ford to be driven on the highway. Pl.'s SUF 78. Within a year of the July 8, 2001 accident, the 1977 Ford Ltd. was sent to a junkyard and destroyed. Def.'s SUF 12.

**C. DAVID BACK'S INJURIES**

On the morning of July 8, 2001, Dennis Martin explained to his nephew, Jonathan Soult, that the Ford Ltd. "was given to [him] for parts and [he] was going to use the engine, so [he] wanted to hear

it fire." Martin Dep. at 18. After they "got it to fire," the car "ran out of gas," so Martin and his friend, David Back, went to the gas station. Id. at 19. Although Martin allegedly warned David Back not to pour the gasoline in the carburetor, Back did so anyway, which led to a flame "shoot[ing] out of the carburetor." Def.'s SUF 5, Martin Dep. at 20. Jonathan Soult was behind the wheel of the 1977 Ford Ltd. when it backfired and injured Back. Def.'s SUF 6. Back was badly burned.[2] On July 8, 2001, the 1977 Ford Ltd. started and ran from 30 seconds to one minute. Def.'s SUF 9. Jonathan Soult told his mother, Deborah Soult, about the accident within a matter of days. Def.'s SUF 11.

**D. BACK SUES MARTIN AND THE SOULTS; ALLSTATE'S ACTIONS**

In February 2002, Back sued Dennis Martin for the injuries he suffered while priming the 1977 Ford Ltd.'s carburetor. Def.'s SUF 13. The California State Automobile Association (CSAA) Inter-Insurance Bureau hired the firm of Maire, Mansell & Beasley to defend Martin. Def.'s SUF 14. In August 2002, Back settled his claims against Martin. Def.'s SUF 15.

In November 2002, Back served his complaint for the injuries he suffered while priming the 1977 Ford Ltd.'s carburetor on Jonathan Soult and Deborah Soult. Def.'s SUF 16. CSAA retained Maire, Mansell & Beasley to defend the Soults. Def.'s SUF 17. In December 2002, Allstate first received a copy of Back's complaint

[2] Martin explained in his deposition that Back suffered additional injuries because he was wearing a nylon shirt which made the fire difficult to put out. Martin Dep. at 21.

against the Soults. Def.'s SUF 18. On December 11, 2002, Allstate's adjustor, Case Plooy, spoke with one of the Soults' lawyers, who said that CSAA had retained them and that David Back was injured when an automobile backfired. Def.'s SUF 19.

Plooy did not hire an outside field adjuster to investigate the scene of the incident. Pl.'s SUF 44, 45. Allstate did, however, hire the firm of Sonnenschein, Nath & Rosenthal to obtain information about the claim and to provide a coverage analysis. Def.'s SUF 20. Plooy relied on the coverage counsel to investigate, but was unaware of whether the coverage counsel examined any photographs of the automobile, or whether anybody with automotive repair experience examined the automobile. He was also unaware of any information that suggested the Ford was capable of self-propulsion. Pl.'s SUF 50. On December 12, 2002, Allstate's lawyers at the Sonnenschein firm sent the Soults' lawyer a letter that, inter alia, asked them to provide information about their claim and reserving Allstate's rights. Def.'s SUF 21. On December 16, 2002, Allstate's lawyers received a letter from the Soults' lawyers formally tendering their claim for defense and indemnity under the Soults' homeowners policy. Def.'s SUF 22. Other than Plooy's December 11, 2002 telephone conversation with the Soults' lawyer and the Soults' tender letter and its enclosures, the Soults did not provide any additional information to Allstate about their claim. Def.'s SUF 25.

On January 15, 2003, Allstate's lawyer sent a letter denying the claim, explaining that the information provided to it showed

that the accident arose out of the use or maintenance of a motor vehicle and that "[a]lthough there are numerous exceptions to Exception 5, we have no information suggesting that any of them applies." Def.'s SUF 26. Allstate's denial letter stated, "If our understanding of the relevant facts is incorrect or incomplete, we trust you will so inform us. For instance if the loss did not involve a passenger motor vehicle, we would need to know that." Def.'s SUF 27. The Soults did not respond to the denial letter. Def.'s SUF 28. At that time, the Soults did not dispute Allstate's conclusion that the motor vehicle exclusion applied, nor did they dispute the conclusion that the 1977 Ford Ltd. was a motor vehicle. Def.'s SUF 29, 30.

The parties dispute whether Allstate ever received or knew about a policy-limits settlement offer from David Back until this lawsuit was filed.[3] Def.'s SUF 31, 32. The policy-limits demand letter that Back allegedly sent to Allstate only offered to release Deborah Soult, and not Troy or Jonathan Soult. Def.'s SUF 33, 34. The demand letter did not offer to resolve medical liens. Id.

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[3] The letter attached as Exhibit 10 to plaintiff's motion is dated February 19, 2003 and, as defendant notes, is not on letterhead. The letter states that "Mr. Back has authorized a settlement demand of $299,999.00" and that "[t]he purpose of this demand is to give defendant Deborah Soult an opportunity to settle within policy limits of the homeowner's insurance." Pl.'s Ex. 10.

Ultimately, the Soult family allowed Back to obtain a judgment against Jonathan Soult and assigned all of their rights as a first party insured to Back.[4] Compl. at 4. On or about November 6, 2003, plaintiff obtained a judgment against Jonathan Soult in the amount of $3,400,124.70. Id. In January 2004, Back sued Allstate in his own right to collect on his judgment against Jonathan Soult. Because Deborah Soult assigned her rights against Allstate to Back, he also sued Allstate for breaching its insurance contract with her and for "bad faith" in connection with that breach. Id. As Soults' assignee, Back alleges that there was coverage for the accident and that Allstate is liable for bad faith because it did not accept his policy-limits settlement demand. The complaint prays for $38.4 million in damages. Id.

**II.**

**SUMMARY ADJUDICATION STANDARDS**

Summary adjudication, or partial summary judgment "upon all or any part of a claim," is appropriate where there is no genuine issue of material fact as to that portion of the claim. Lies v. Farrell Lines, Inc., 641 F.2d 765, 769 (9th Cir. 1981) ("Rule 56 authorizes a summary adjudication that will often fall short of a

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[4] Back and the Soults' lawyers agreed that: (1) Jonathan Soult would suffer judgment without putting on any defense; (2) Deborah Soult would also assign to Back any rights she had against Allstate because it denied the claim; (3) CSAA would pay Back the $15,000 remaining under Martin's auto policy's limits; and (4) Back agreed not to try to record or collect on his judgment against the Soults.

Cal. Ins. Code § 11580(b)(2) permits a judgment creditor to proceed directly against the insurer for the responsible party.

final determination, even of a single claim") (citations omitted); Playboy Enters., Inc. v. Welles, Inc., 78 F. Supp. 2d 1066, 1073 (S.D. Cal. 1999), aff'd in part, rev'd in part, on other grounds, 279 F.3d 796 (9th Cir. 2002); E.D. Local Rule 56-260(f).

> Under summary judgment practice, the moving party
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> always bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of 'the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any,' which it believes demonstrate the absence of a genuine issue of material fact.

Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). "[W]here the nonmoving party will bear the burden of proof at trial on a dispositive issue, a summary judgment motion may properly be made in reliance solely on the 'pleadings, depositions, answers to interrogatories, and admissions on file." Id. Indeed, summary judgment should be entered, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial. See id. at 322. "[A] complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial." Id. In such a circumstance, summary judgment should be granted, "so long as whatever is before the district court demonstrates that the standard for entry of summary judgment, as set forth in Rule 56(c), is satisfied." Id. at 323.

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If the moving party meets its initial responsibility, the burden then shifts to the opposing party to establish that a genuine issue as to any material fact actually does exist. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986); See also First Nat'l Bank of Ariz. v. Cities Serv. Co., 391 U.S. 253, 288-89 (1968); Secor Limited, 51 F.3d at 853.

In attempting to establish the existence of this factual dispute, the opposing party may not rely upon the denials of its pleadings, but is required to tender evidence of specific facts in the form of affidavits, and/or admissible discovery material, in support of its contention that the dispute exists. See Fed. R. Civ. P. 56(e); Matsushita, 475 U.S. at 586 n.11; See also First Nat'l Bank, 391 U.S. at 289; Rand v. Rowland, 154 F.3d 952, 954 (9th Cir. 1998). The opposing party must demonstrate that the fact in contention is material, i.e., a fact that might affect the outcome of the suit under the governing law, Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986); Owens v. Local No. 169, Assoc. of Western Pulp and Paper Workers, 971 F.2d 347, 355 (9th Cir. 1992) (quoting T.W. Elec. Serv., Inc. v. Pacific Elec. Contractors Ass'n, 809 F.2d 626, 630 (9th Cir. 1987), and that the dispute is genuine, i.e., the evidence is such that a reasonable jury could return a verdict for the nonmoving party, Anderson, 477 U.S. 248-49; see also Cline v. Industrial Maintenance Engineering & Contracting Co., 200 F.3d 1223, 1228 (9th Cir. 1999).

In the endeavor to establish the existence of a factual dispute, the opposing party need not establish a material issue of

fact conclusively in its favor. It is sufficient that "the claimed factual dispute be shown to require a jury or judge to resolve the parties' differing versions of the truth at trial." First Nat'l Bank, 391 U.S. at 290; See also T.W. Elec. Serv., 809 F.2d at 631. Thus, the "purpose of summary judgment is to 'pierce the pleadings and to assess the proof in order to see whether there is a genuine need for trial.'" Matsushita, 475 U.S. at 587 (quoting Fed. R. Civ. P. 56(e) advisory committee's note on 1963 amendments); see also International Union of Bricklayers & Allied Craftsman Local Union No. 20 v. Martin Jaska, Inc., 752 F.2d 1401, 1405 (9th Cir. 1985).

In resolving the summary judgment motion, the court examines the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any. Rule 56(c); See also In re Citric Acid Litigation, 191 F.3d 1090, 1093 (9th Cir. 1999). The evidence of the opposing party is to be believed, see Anderson, 477 U.S. at 255, and all reasonable inferences that may be drawn from the facts placed before the court must be drawn in favor of the opposing party, see Matsushita, 475 U.S. at 587 (citing United States v. Diebold, Inc., 369 U.S. 654, 655 (1962)(per curiam)); See also Headwaters Forest Defense v. County of Humboldt, 211 F.3d 1121, 1132 (9th Cir. 2000). Nevertheless, inferences are not drawn out of the air, and it is the opposing party's obligation to produce a factual predicate from which the inference may be drawn. See Richards v. Nielsen Freight Lines, 602 F. Supp. 1224, 1244-45 (E.D. Cal. 1985), aff'd, 810 F.2d

898, 902 (9th Cir. 1987).

Finally, to demonstrate a genuine issue, the opposing party "must do more than simply show that there is some metaphysical doubt as to the material facts. . . . Where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no 'genuine issue for trial.'" Matsushita, 475 U.S. at 587 (citation omitted).

**III.**

**ANALYSIS**

**A. COVERAGE UNDER THE SOULTS' POLICY**

The instant motion presents the threshold question of whether an exclusion contained in the Soults' homeowners policy precludes coverage of the July 8, 2001 accident. As I explain below, the parties' motions for summary judgment relating to coverage must be denied because there remain disputed facts which pertain to whether the Ford Ltd. qualifies as a "motor vehicle" and whether the accident arose out of the "use or maintenance" of the Ford Ltd.

Under California law, the Soults' policy is to be interpreted from the perspective of what a reasonable person in the position of the insured would have understood the words to mean. Montrose Chem. Corp. v. Admiral Ins. Co., 10 Cal.4th 645, 666-667 (1995). "The policy should be read as a layman would read it and not as it might be analyzed by an attorney or an insurance expert." Crane v. State Farm Fire & Cas. Co., 5 Cal.3d 112, 115 (1971); see also Reserve Ins. Co. v. Pisciotta, 30 Cal.3d 800, 807 (1982).

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Ambiguities in coverage clauses are normally resolved in favor of upholding the insured's reasonable expectations. Montrose, supra, 10 Cal.4th at 667. Finally, if neither the plain meaning of the words used nor the reasonable expectations of the insured resolve the ambiguity in an insurance policy, the policy will be construed against the insurer. Bank of the West v. Superior Court, 2 Cal.4th 1254, 1265 (1992).

Coverage exclusions and limitations are strictly construed against the insurer and liberally interpreted in favor of the insured. Delgado v. Heritage Life Ins. Co., 157 Cal.App.3d 262, 271 (1984); Healy Tibbitts Constr. Co. v. Employers' Surplus Lines Ins. Co., 72 Cal.App.3d 741, 749 (1977). Exceptions to exclusions are construed broadly in favor of the insured. National Union Fire Ins. Co. v. Lynette C., 228 Cal.App.3d 1073 (1991); see also American Star Ins. Co. v. Ins. Co. of the West, 232 Cal.App.3d 1320, 1327) (1991).

**a. Was the Ford Ltd. a "Motor Vehicle"?**

The Soults' homeowners policy excludes from coverage any "bodily injury or property damage arising out of the ownership, maintenance, use, occupancy, renting, loaning, entrusting, loading or unloading of any motor vehicle or trailer." Plaintiff contends that the exclusion does not apply because "the instrument of plaintiff's injury was an engine," and not a "motor vehicle." Pl.'s Mot. at 10. Defendant, on the other hand, maintains that the instrument was, in fact, a "motor vehicle," and argues that Allstate's policy did not cover the claim. Def.'s Mot. at 11.

Under the law, it appears that plaintiff's point is well-taken.

Plaintiff cites Civil Serv. Employees Insur. Co v. Wilson, 22 Cal.App.2d 519 (1963), for the proposition that the Ford Ltd. was not a "motor vehicle."[5] Relying on Wilson, plaintiff argues that the instrument of plaintiff's injury was "an engine contained in a junker 1977 Ford LTD which was not subject to registration under California Vehicle Code §4000." Pl.'s Mot. at 8. Defendant maintains that the Wilson's court's reliance on the Vehicle Code's definition of "automobile" is inapt because the plain language controls, and thus, "technical definitions from statutes do not count" (citing Bluehawk v. Continental Ins. Co., 50 Cal.App.4th 1126 (1996)). It argues that reliance on the Vehicle Code's definition would be tantamount to relying on a prohibited extrinsic aid. Defendant alternatively argues that unlike the vehicle in Wilson, the Ford Ltd. "was capable of self-propulsion," and finally, that "even cars in a state of monumental disrepair are still motor vehicles." Def.'s Mot. at 14. The defendant's resort to common sense is appealing, but cannot prevail.[6]

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[5] In Wilson, an automobile insurer attempted to avoid paying for a car accident based on a policy requirement that the policy holder insure all of her automobiles through it. The insurer argued that the policyholder voided her policy because she did not insure a 1946 Chevrolet that she had inherited. The court relied on the legal definition of "motor vehicle" contained in Section 415 Vehicle Code which requires "self-propulsion" to be considered a vehicle and held that the 1946 Chevrolet was not a motor vehicle.

[6] As I have noted elsewhere, however, common sense is what tells us the world is flat.

While it is true that extrinsic interpretative aids may be utilized to interpret a policy's definition only when the policy language is ambiguous, the court need not rely on "extrinsic interpretive aids" in this instance. Bank of the West v. Superior Court, 2 Cal.4th 1254 1264-1265 (interpretative aids and rules employed only when insurance policy is ambiguous); Smyth v. USAA Property & Casualty Ins. Co., 5 Cal.App.4th 1470, 1474 (1992) (principles of construction "'come[] into play only if it is first determined that an ambiguity exists, which is also a question of law' "]). Nor need the court rely on what defendant characterizes as "Wilson's decades-old, restored-to-self-propulsion test" to conclude that a "motor vehicle" requires self-propulsion, that is because the Code's definition mirrors the ordinary, i.e., plain, meaning of "motor vehicle." See American Heritage Dictionary of the English Language, Fourth Edition (motor vehicle defined as "[a] self-propelled wheeled conveyance, such as a car or truck, that does not run on rails."); See also Merriam-Webster Dictionary Third New International Dictionary, Unabridged (2002)(motor vehicle defined as "an automotive vehicle not operated on rails," where "automotive" refers to something "of, relating to, or concerned with self-propelled vehicles or machines"). Given the plain meaning of "motor vehicle," the court concludes that "a reasonable person in the position of the insured well might have understood the words "motor vehicle" to mean a conveyance that is "self-propelling," or operable, which, as noted, as it relates to the Ford Ltd., is disputed.

Defendant insists that even if the Vehicle Code's definition applies, the Ford Ltd. qualifies as a motor vehicle because it was capable of self-propulsion or being restored to that condition. Def.'s Mot. at 13-14. Defendant cites to evidence in the record that the car started and ran for 30 seconds to a minute, that it was "intact, with an engine, transmission, steering wheel windshield, tires, rims, etc.," and that Dennis Martin - the only mechanic who inspected the car - could have put it in driveable condition. Id. Defendant ignores other evidence in the record which puts this contention in dispute. Evidence offered by plaintiff suggests that the Ford Ltd. was not capable of self-propulsion, and it is unclear from the record whether the Ford could have been restored to a self-propelling state. Teresa Voboril stated that she did not believe the car was driveable in any way when she gave it to Martin. Pl.'s SUF 29. When the vehicle was transferred to Dennis Martin, she believed the only thing of value was the engine. Pl.'s SUF 33. Even though Martin stated that "he could get anything running," he also noted that the vehicle was unsafe and "never had it in his mind" to put the car in driveable condition. Pl.'s SUF 77, citing Martin Dep. at 29-30. As noted above, Martin never registered the Ford to be driven on the highway. Pl.'s SUF 78. Put directly, a dispute exists as to whether the Ford Ltd. constituted a "motor vehicle."

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**b. Accidents arising out of the "use or maintenance" of a motor vehicle**

In addition to the issue noted above, there appears to be another disputed issue of material fact which bears on whether or not the exclusion precludes coverage of Back's accident. The Allstate homeowners policy excludes from coverage "accidents that arise out of the use or maintenance of a motor vehicle."[7] Despite defendant's unambiguous assertion that "no one can dispute that Back was injured as he was starting a 1977 Ford LTD," Def.'s Mot. at 12, it is indeed unclear from the evidence presented whether Back poured the gasoline into the carburetor to "use or maintain" the Ford Ltd. Put differently, there is a factual dispute as to whether the parties were attempting to "maintain" the Ford Ltd. - that is, to bring it into a state of repair or efficiency, or whether, as Martin's deposition suggests, Back poured the gasoline into the carburetor to "fire" the engine in order to see if the engine would work.

In his version, Martin explained to Jonathan Soult on July 8, 2001 that the Ford Ltd. "was given to [him] for parts and [he] was going to use the engine, so [he] wanted to hear it fire." Martin

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[7] Because "maintenance" is not defined anywhere in the policy, it is to be interpreted from the perspective of what a reasonable person in the position of the insured would have understood the words to mean. Montrose Chem. Corp. v. Admiral Ins. Co., 10 Cal.4th at 666-667 (1995). In this instance, the court concludes that a reasonable person would have understood "maintenance" as it is ordinarily defined, i.e., "the labor of keeping something in a state of repair or efficiency." Webster's Third New International Dictionary, Unabridged (2002).

Dep. at 18. Apparently, after Martin and Soult "got [the Ford] to fire," the car "ran out of gas," so Martin and Back went to the gas station for more gasoline. Id. at 19.

It is unclear whether Back poured the gasoline in the carburetor to use or maintain the Ford Ltd., but Martin's deposition suggests that Martin and Back never intended to maintain the Ford and get it back to running order. Rather, the evidence suggests that Martin, Back, and Soult poured gasoline into the Ford Ltd. to "fire" the engine. Martin asserts that he was never interested in restoring the Ford and that he "looked at it as an engine block . . . a piece of junk that should have never entered the street and never would have." Martin Dep. at 28, 36. Martin consistently maintained that he did not consider the car to have any value outside of the value of the engine. Id. at 32. For all of the above reasons, I conclude that it is disputed whether Back, Martin, and Soult were "us[ing]" or "maintaining" the Ford Ltd. when Back poured the gasoline into the carburetor, causing serious injuries to himself on July 8, 2001.[8]

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[8] Somewhat surprising to this court, a number of courts have concluded that "[an] attempt to start [a car] by pouring gasoline into the carburetor, which resulted in the ignition of the gas, involved 'maintenance' of the vehicle within the terms of [the] exclusion." Broadway v. Great American Ins. Co., 465 So.2d 1124, 1128 (1985). See also David v. Tanksley, 218 F.3d 928 (8th Cir. 2000); Lawson v. Allstate Ins. Co., 456 So.2d 1235 (1984); North Star Mut. Insur. Co. v. Carlson, 442 N.W.2d 848 (1989); Volkswagon Ins. Co. v. Nguyen, 405 So.2d 190 (1981); Holliman v. MFA Mut. Ins. Co., 289 Ark. 276, 711 S.W.2d 159 (1986); Hollis v. St. Paul Fire & Marine Insur. Co., 416 S.E.2d 827 (1992). It is, to say the least, unclear to the court how the issue could be one of law rather than fact. In any event, in the matter at bar there is evidence that Back and Soult never intended to "maintain" or "use"

**B. DUTY TO SETTLE**

Plaintiff argues that on February 19, 2003, he sent a letter to Allstate which provided for a policy-limits settlement offer which Allstate failed to consider. Plaintiff contends Allstate acted in bad faith by failing to conduct an investigation into the legitimacy of the Soults' claims. Pl.'s Mot. at 17. Allstate, on the other hand, argues that it never received the offer to settle and so cannot be liable for failing to settle and for any bad faith claim premised on such allegations.

Although California courts have held that an insurer must act in good faith "in an effort to negotiate a settlement" and that an insurer owes a duty to respond to settlement demands, see, e.g., Shade Foods, Inc. v. Innovative Prods. Sales and Marketing, Inc., 78 Cal.App.4th 847, 906 (2000), summary judgment cannot be granted regarding bad faith and the policy limits based on Allstate's alleged refusal to settle.

First, I note that there is a disputed issue as to whether defendant ever received the settlement letter. See Pl.'s Ex. 10. Plaintiff's counsel submits a declaration from his secretary, who claims to have mailed the demand letter. Defendant, however, contends that it never received the policy-limits demand letter and were not otherwise aware of that demand. Def.'s Opp'n at 23, citing Sullivan Decl. ¶ 6, Barnes Decl. ¶ 7, Plooy Decl. ¶ 10.

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the Ford Ltd. but were merely interested in finding out whether the engine could be started.

Because this issue turns on credibility, summary judgment must be denied.

Additionally, the court cannot grant summary judgment based on defendant's alleged failure to settle because, as defendant points out, Back never offered to settle with Jonathan Soult. It is undisputed that the demand letter that Back's counsel allegedly sent only offers to settle with Deborah Soult. Thus, as Allstate notes, even if it had received Back's policy-limits demand letter, it could not have accepted it because the letter did not offer to release either Troy Soult or Jonathan Soult, both of whom were also insured under the policy. Under California law, an insurance company cannot accept an offer that does not release all of its insureds. See, e.g., Moreno v. Allstate Ins. Co., 2002 WL 31133203 at *3 (E.D. Cal. Sept. 10, 2002)("As a matter of law, Allstate could not accept [the] policy-limits settlement offer without obtaining a release for all insureds covered by its liability policy."); Letho v. Allstate Ins. Co., 31 Cal.App.4th 60, 75 (1994) ("[A]n insurer can breach its duty to its insureds by disbursing the policy proceeds to [a] claimant without first obtaining a release of the insureds . . . . We know of no case permitting an insured . . . to sue for bad faith on the basis of the insurer's rejection of a settlement demand because it did not include a complete release . . . ."). Because Allstate could not accept a settlement offer without obtaining a release for all insureds, the court grants Allstate's motion for summary adjudication as to the

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duty to settle claim, and any claim arising out of Allstate's duty to settle in order to protect its insured.[9]

**C. ALLSTATE'S ALLEGED FAILURE TO INVESTIGATE**

Plaintiff contends that Allstate had a duty to provide its own expertise in evaluating the Soults' claims. Plaintiff contends that Allstate did not conduct any investigation into the facts surrounding plaintiff's claim and that plaintiff is entitled to summary adjudication as to whether the conduct of defendant constituted bad faith. Defendant disputes these contentions and maintains that it is entitled to summary adjudication with respect to bad faith because there was a legitimate dispute whether Allstate's policy covered the Soults' claim.

In order to establish a breach of the implied covenant of good faith and fair dealing under California law, a party must show (1) benefits due under the policy were withheld, and (2) the reason for withholding benefits was unreasonable or without proper cause. Guebara v. Allstate Ins. Co., 237 F.3d 987, 992 (9th Cir. 2001) (citing Love v. Fire Ins. Exch., 221 Cal.App.3d 1136, 1151 (1990)).

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[9] Defendant contends that Back is not entitled to any recovery beyond the policy limits because it could not have accepted the settlement offer. While the court agrees that no bad faith liability should attach based on the failure to settle claim, as discussed infra, the court cannot decide whether Back is entitled to recovery beyond the policy limits because plaintiff also avers that Allstate acted in bad faith by failing to investigate the Soults' claim.

Because the key to a bad faith claim is whether denial of a claim was reasonable, a bad faith claim should be dismissed on summary judgment if the defendant demonstrates that there was "a genuine dispute as to coverage." Id.; and see Feldman v. Allstate Ins. Co., 322 F.3d 660, 669 (9th Cir. 2003). The Ninth Circuit has held that the "genuine dispute doctrine" should be applied on a case-by-case basis. Guebara, 237 F.3d at 993. Thus, the court is in the position of assessing whether Allstate's denial of the Soults' claim was reasonable and whether there was "a genuine dispute as to coverage." Feldman, supra.

While there can be no doubt that there was a dispute concerning coverage, whether denial of the Soults' claim was done in good faith is for the jury. Guebara, 237 F.3d at 992. In Guebara, the Ninth Circuit made clear that "the key to a bad faith claim is whether denial of a claim was reasonable," a question that turns on a myriad of facts which can only be determined on a case-by-case basis. Plaintiff asserts that defendant should have conducted its own investigation rather than assigning such duties to an outside law firm, while defendant argues that there was a legal dispute as to whether the claim was covered in the first instance. It is clear to the court that the question of reasonableness, a quintessential jury question, is, under the circumstances, not amenable to disposition at the summary judgment stage. While the Ninth Circuit has explained that a bad faith claim could be dismissed on a summary judgment motion if the defendant demonstrates that there was a "genuine dispute as to

coverage," id., the court refrains from doing so here because a jury might reasonably find that defendant's alleged misrepresentation of the law and of the facts warrants bad faith. The question of "reasonableness" will inevitably engender disparate results because each case will have disparate facts. The wide and diverse experience of juries then may well be preferred to reliance on the insulated experience of the court in deciding this issue.

Plaintiff also requests punitive damages, noting that the Ninth Circuit has held that punitive damages are recoverable where the defendant acts in bad faith. Pl.'s Mot. at 14. Defendant argues that it is entitled to summary adjudication on the punitive damages claim because there existed a "genuine issue" as to whether the claim was covered under the policy. Because, for the reasons explained above, the court cannot resolve the bad faith question, summary judgment as to punitive damages must also be denied.[10]

**IV.**

**CONCLUSION**

For all the foregoing reasons, the court hereby ORDERS as follows:

1. The parties' motions for summary adjudication as to whether Back's accident was covered under the Soults' policy are DENIED.

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[10] The court notes that "[d]eterminations related to assessment of punitive damages have traditionally been left to the discretion of the jury." Amadeo v. Principal Mutual Life Ins. Co., 290 F.3d 1152, 1165 (9th Cir. 2002)(citation omitted).

2. Defendants' motion for summary adjudication as to the duty to settle claim, and bad faith premised upon such allegation, is GRANTED.

3. The parties' motion for summary adjudication as to bad faith premised upon Allstate's alleged failure to investigate are DENIED.

4. The parties' motions for summary adjudication as to punitive damages are DENIED.

IT IS SO ORDERED.

DATED: July 13, 2005.

/s/Lawrence K. Karlton
LAWRENCE K. KARLTON
SENIOR JUDGE
UNITED STATES DISTRICT COURT